IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

Crl.MC.No. 4135 of 2006()

CC.1151/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

.....

PETITIONER: ACCUSED NO.1

SHAJI, S/O.SREEDHARAN,
KUTHIRAVATTATHU PARAMBIL, WARD NO.1,
KARUMALLOOR PANCHAYAT, NORTH PARAVUR,
ERNAKULAM DISTRICT, KERALA.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: COMPLAINANT.

THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 4135 of 2006

- -

Dated this the 2nd day of January, 2007

O R D E R

The petitioner is the first accused in a prosecution under the provisions of the Essential Commodities Act. Cognizance has been taken by the learned Magistrate on the basis of the final report submitted by the police.

2. The crux of the allegations against the petitioner is that he was found illegally tapping diesel which was loaded in a tanker. The petitioner was allegedly the driver of the vehicle. Altogether there are two accused persons. The petitioner has not appeared before the learned Magistrate. A warrant of arrest is issued by the learned Magistrate to procure his presence. The petitioner has rushed to this Court with a prayer that the prosecution initiated against him may be quashed. It is contended that the allegations raised are not correct and that at any rate the petitioner does not deserve to suffer the trauma of such a prosecution.

3. I have heard the learned counsel for the petitioner. I have perused the petition filed as also the Annexures. I am certainly of the

opinion that this is a fit case where the petitioner must appear before the learned Magistrate and claim discharge under Section 239 Cr.P.C. Needless to say, the petitioner's claim shall be considered by the learned Magistrate under Section 239 Cr.P.C. and appropriate decision taken. I am not persuaded to agree that this is a fit case where this court can or ought to invoke its powers under Section 482 Cr.P.C. to prematurely terminate the proceedings against the petitioner. If charges are not liable to be framed that contention must be urged before the learned Magistrate and appropriate orders sought under Section 239/240 Cr.P.C.

4. Finally the counsel submits that a direction may be issued to the learned Magistrate to release the petitioner on bail when he appears before the learned Magistrate. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v.

Dy.S.P. of Police (2003 (1) KLT 339). I need only observe that the learned Magistrate must pass appropriate orders on merits expeditiously.

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

(R. BASANT)
Judge

tm